

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

2018 NOV -5 PM 1:05

DEPUTY CLERK *KM*

RODERICK A. HALL,

§

Plaintiff,

§

-V-

§

MATHEW POWELL, SEAN LONG,

§

CIVIL ACTION NUMBER

BRADY LEWIS,

§

5:18-CV-243-C

and RICK MALDONADO,

§

Defendants,

§

PLAINTIFF'S MOTION AND MEMORANDUM IN RESPONSE TO
DEFENDANT'S MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)

TO THE HONORABLE JUDGE OF SAID COURT:

Come Now Plaintiff RODERICK A. HALL, hereafter referred to as 'Plaintiff' and files this response to defendants motion to dismiss pursuant to [FRCP] 12(b)(6). Plaintiff asks the court to **DENY** the motion to dismiss and, request the opportunity to amend the complaint to correct any error's as authorized by [FRCP] 15(a)(1)(A). Additionally, the motion to dismiss seeks to introduce evidence (documents), of which, have been shown during other proceedings to be forged.

A. INTRODUCTION

1. Plaintiff originally filed his complaint in a Texas state court on November 2nd, 2016.
2. Defendant's removed the state court action to this federal court on September 28th, 2018.
3. Defendant's have not filed an answer to the complaint in this court.
4. Defendant's filed the motion to dismiss pursuant to [FRCP]

12(b)(6) in this federal court on October 11th, 2018.

5. The motion seeks dismissal for only two of the four defendants listed in the complaint.

6. Defendants seeking dismissal claim they have absolute immunity.

7. Defendants seek to introduce evidence (documents) in the motion to dismiss, of which, have been shown during other proceedings (State Bar Investigation) to be forged.

8. Plaintiff has not had an opportunity to amend or correct any error's in the complaint.

9. Plaintiff requires an opportunity to amend the complaint to state a compensable claim.

10. Plaintiff's amendment will seek to use the 42 U.S.C. § 1983 proceeding as a discovery mechanism showing the defendants seeking dismissal have evidence in their possession that shows the police officers in this suit violated plaintiff's rights and, the defendants seeking dismissal acted outside their role as advocate.

B. ARGUMENT

11. Courts have granted absolute immunity to prosecutors. (See **Imbler v. Pachtman**, 424 U.S. 409 (1976)). However, a prosecutor is not absolutely immune with respect to actions outside his role as an advocate. (See **Kalina v. Fletcher**, 522 U.S. 118 (1997) ; **Hoog-Watson v. Guadalupe Cty., Tex.**, 591 F. 3d 431, 438 (5th Cir. 2009)).

12. Federal courts have prohibited dismissal under [FRCP] 12(b) (6) where, (1) The defendant had not filed an answer and the plaintiff still has a right to amend his complaint pursuant

to [FRCP] 15(a)(1)(A); (2) Plaintiff's claim is made in good faith; and (3) The district court has not provided the plaintiff with notice of it's intent to dismiss and an opportunity to respond. (See Federal Rule of Civil Procedure [FRCP] 15(a); **U.S. v. Humana Health Plan of Tex. Inc.**, 336 F. 3d 375, 387 (5th Cir. 2003); **American United Life Ins. co. v. Martinez**, 480 F. 3d 1043, 1057 (11th Cir. 2007); **Phelps v. U.S. Bur. of Prisons**, 62 F. 3d 1020, 1022 (8th Cir. 1995); **Foman v. Davis**, 371 U.S. 178, 182 (1962).

13. A party may amend it's pleading once as a matter of course before being served with a responsive pleading. [FRCP] 15(a)(1)(A); **Barbara v. New York Stock Exch. Inc.**, 99 F. 3d 49, 56 (2nd Cir. 1996).

14. Neither a motion to dismiss nor a motion for summary judgment is a response pleading. (See **McGuire v. Turnbo**, 137 F. 3d 321, 325 n. 4 (5th Cir. 1998).

15. Plaintiff should be afforded an opportunity to file an amended complaint to state a compensable claim, show how defendants acted outside their role as advocates and, show how defendants possess evidence the police used a reckless disregard for the truth and deliberate falsehood in the 'Probable Cause' affidavit in violation of **Franks v. Delaware**, 98 S. Ct. 2674 (1978).

16. 42 U.S.C. § 1983 can be used as a discovery mechanism to obtain evidence in the possession of state authorities. (See **SKINNER**, U.S. S. Ct. Case overturning dismissal of 5th Cir. case denying 42 U.S.C. § 1983 as a discovery tool. Actual cite unknown to plaintiff, cite unreadable in law library book.)

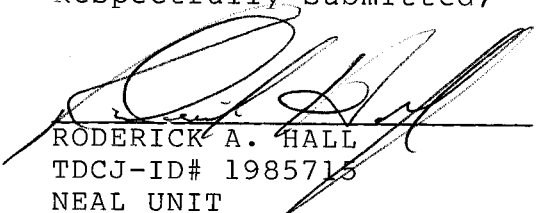
C. CONCLUSION

For the reasons set forth above, Plaintiff request the court DENY the motion to dismiss, and/or, STAY the motion until the court provides an opportunity to plaintiff to amend complaint.

Wherefore, Premises considered, Plaintiff respectfully prays the court will DENY the motion to dismiss and provide an opportunity (A Reasonable Amount of Time) for plaintiff to amend the complaint as authorized by [FRCP] 15(a)(1)(A). Additionally, inform plaintiff of his opportunity to amend and the time allowed to submit said amendment.

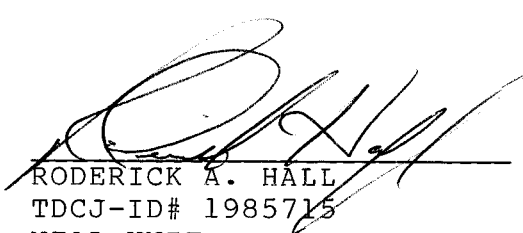
11-2-18
DATE

Respectfully submitted,


RODERICK A. HALL
TDCJ-ID# 1985715
NEAL UNIT
9055 spur 591
Amarillo, TX 79107

CERTIFICATE OF SERVICE

"I swear under penalty of perjury a true and correct copy of the above and foregoing was served on defendant's attorney, by placing same in the prison mailbox on Nov 2, 2018, postage paid and addressed to Matt Matzner, CD&M, P.O. Box 64479, Lubbock, TX 79464".



RODERICK A. HALL
TDCJ-ID# 1985715
NEAL UNIT
9055 spur 591
Amarillo, TX 79107

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
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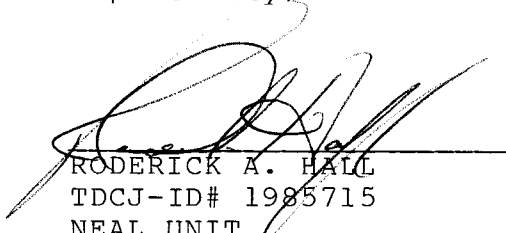
RODERICK A. HALL,	§	
Plaintiff,	§	
-v-	§	
MATHEW POWELL, SEAN LONG,	§	CIVIL ACTION NUMBER
BRADY LEWIS,	§	5:18-CV-243-C
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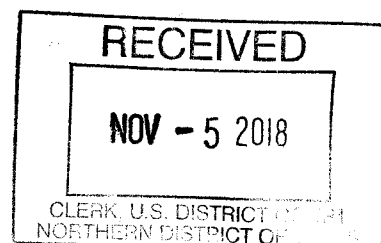
CLERK

I am the plaintiff above and request you file the enclosed response pleading (5) pages with the court on my behalf.

Respectfully,

11-2-18
DATE


RODERICK A. HALL
TDCJ-ID# 1985715
NEAL UNIT
9055 spur 591
Amarillo, TX 79107



Rogers Hall #01985-715
New Unit
9855 Spivey St
Amarillo, TX 79107

UNITED STATES DISTRICT COURT
Northern District of Texas
1205 Texas Ave., Room 209
Fusbeck, TX 79401

